

No. 5:17-CR-51-1H
No. 5:18-CV-549-H

Respondent.

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ORDER

Before the court are Petitioner's motion to vacate pursuant to 28 U.S.C. § 2255 [DE #53], as amended by his supplemental motion filed June 18, 2020 [DE #72]; the Government's motion to dismiss [DE #62], filed prior to Petitioner's supplemental motion; and the Government's motion to stay the proceedings pending issuance of the mandate in *United States v. Gary*, 954 F.3d 194 (4th Cir. Mar. 25, 2020), *cert. filed*, No. 20-444 (U.S. Oct. 7, 2020) [DE #75]. These motions have been referred to the undersigned by Senior United States District Judge Malcolm J. Howard.

Counsel are directed to confer and to submit to the court, on or before **January 29, 2021**, a joint report informing the court of the parties' positions regarding the following matters:

1. whether the court should defer the evidentiary hearing on Petitioner's claim that counsel was ineffective for failing to appeal until after its decision on Petitioner's *Rehaif* claim;

2. whether amendment or supplemental briefing is requested and, if so, a proposed timeframe for such submissions;

3. a list of the witnesses each party anticipates calling to testify at the evidentiary hearing;

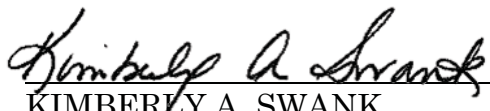
4. in light of potential health risks associated with the COVID-19 pandemic:

a. whether the presentation of witness testimony should be conducted by videoconference or other similar means; and

b. whether Petitioner intends to be present in court for the hearing or to participate by videoconference or other similar means;
and

5. at least three potential dates and the estimated time for hearing of Petitioner's § 2255 motion should the court decide to conduct the evidentiary hearing prior to disposition of Petitioner's *Rehaif* claim.

This 4th day of January 2021.


KIMBERLY A. SWANK
United States Magistrate Judge